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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1096

INDEPENDENT WAREHOUSES, INC., PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY AND JAMES THOMPSON,

Appellants,

vs.

WILLIAM SCHEELE, RECORDER OF THE TOWNSHIP OF SADDLE RIVER, AND THE TOWNSHIP OF SADDLE RIVER.

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

HARRY LANE,
Counsel for Appellees.

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STATEMENT OPPOSING JURISDICTION

The New Jersey Court of Errors and Appeals held valid a municipal ordinance adopted by the Township of Saddle River, a municipal corporation of the State of New Jersey, fixing a license fee on warehouses of three-quarters of a cent (¾ of 1¢) per square foot of ground area, and sustained the imposition on the Appellants, Independent Warehouses, Inc., and James Thompson, its employee, of a penalty

of Two Hundred ($200.00) dollars for violation of Section 1 thereof on a charge of storing coal in a warehouse without first having obtained a license therefor.

The New Jersey Court of Erorrs and Appeals found the following facts:

"The essential facts are not in dispute. The storage plant, commonly known as 'Coalberg,' is owned by the Pennsylvania Coal Company, a Pennsylvania corporation. It comprises 67¼ acres of land and buildings, tracks, chutes, hoppers, scales, machinery and equipment. The owner leased the yard in its entirety to Independent Warehouses, Inc., a New York corporation, at the nominal annual rental of one dollar. These corporations are wholly owned subsidiaries of the Erie Railroad Company, a common carrier in interstate commerce; and under agreements between these parties, the plant is operated by the Pennsylvania Company 'for the benefit and on behalf of,' and at the sole expense of the Erie Company's trustees, 'as a public service facility for shippers of prepared anthracite coal on Erie lines desiring storage space in accordance with and under the rates named in a certain tariff on file with the Interstate Commerce Commission and the Public Utilities Commission of the State of New Jersey, issued January 24, 1939,' and any supplements thereto. The Erie's trustees agreed to maintain an agent at the yard authorized on their behalf to issue warehouse receipts for coal placed therein 'for storage by shippers.' The Pennsylvania Company undertook to remit to the trustees, monthly, the net operating surplus; and the trustees assumed the obligation of reimbursement for the net operating loss, if any. By express provisions, 'taxes are includable in the 'allowable items of expense chargeable against' operation and maintenance. By this arrangement, the Erie's trustees sought to avert the diversion 'of shipments of coal * * * to other competing lines on which facilities for coal storage are available.'

"The agreement with Independent Warehouses, Inc. recites that it was 'the desire and for the interest' of

the Pennsylvania Company that the lessee should conduct upon the premises the 'general business of a warehouseman,' and provides that the lessee shall devote the yard to such purposes, and shall furnish storage therein for 'any and all types of coal * * * tendered to it for warehousing for the account or at the request of 'the Pennsylvania Company (if there shall be available storage space) at the rate of two cents per ton, with a minimum annual charge of $600. There was also a provision for reimbursement of the lessee for its losses, costs and expenses not classable as 'ordinary.' By a supplemental agreement, the storage rate was reduced to one-half cent per ton, and the annual minimum charge to $500. The New York, Susquehanna and Western Railroad Company has certain contractual trackage rights at the yard, and the use of other facilities. Independent Warehouses, Inc. is engaged in the public warehouse business 'at various places in nine states.' For some 15 years prior to the agreement with the Pennsylvania Company, Independent had issued warehouse receipts for coal stored in this yard.

"The Pennsylvania Company owns and operates anthracite coal mines in the State of Pennsylvania. Coal sold at the mines is, by contract with the purchaser, shipped in interstate commerce, over the railroad of the Erie Company, and stored at the Coalberg yard until, at the shipper's direction, it is again conveyed by rail to its ultimate destination. For the in-transit storage, including unloading, reloading, and the incidental services, the shipper pays to the carrier a tariff charge of 28¢ per ton. Free storage is permissible for as long as two years. This storage is designed to meet seasonable deficiencies and shortages due to the excess of consumption over production and to facilitate the financing of purchases through negotiable warehouse receipts, all of which, it is said advance the general welfare as well as serve the particular interests of the mine operators, shippers and carriers. Erie's Coal Freight Agent testified that, when because of seasonal conditions the supply exceeds the demand, 'the operators bill' coal 'to storage, to

store it at an advantageous point for reshipment;' that 'the shipper hasn't enough orders to ship it out directly to destination;' that all the coal 'is consigned to Coalberg, Rochelle Park, for storage, billed at the regular tariff rates from the mine to the storage plant,' and 'it is held there awaiting orders from the consignee as to what is to happen to it.' This course 'relieves the car situation,' and it 'also helps the operator to continue operating.'

"There is an established tariff charge for the storage; and the argument, in brief, is that through the 'contract agencies' of the Pennsylvania Company, as the owner of the plant, and Independent, as a 'public warehouseman,' the Erie Company 'utilizes' this facilities 'solely to provide regular tariff intransit services to its shippers for interstate shipments of coal from the Pennsylvania mines to ultimate destinations through, and beyond, Coalberg, with the facilities provided by the storage of the coal with a public warehouseman, as a regular transportation service facility over its line, pursuant to the demands of shippers;' and that the 'tariff charges for this intransit service are collected by the carriers directly from the shippers, and Erie, and participating carriers, bear the entire expense of the transit facilities.'

"But the coal is shipped to the purchaser or his consignee at Coalberg, Rochelle Park, and freight charges are collected at the rate prescribed for transportation from the mines to that particular point, plus storage and unloading charges; and, when the coal is reshipped, there is, as we have seen, a new billing, to the ultimate destination at the through interstate rate from the point of origin to the new destination, plus reloading charges, 'as a continuance of the original interstate movement,' and the balance is paid by the shipper at Coalberg. The ultimate is not determined until the owner gives shipping instructions. Compare *Federal Compress & W. Co. v. McLean*, 291 U. S. 17, 54 S. Ct. 267, 78 L. Ed. 622.

"Thus the continuity of the carriage in interstate commerce is broken when the carried commodity is unloaded and stored at Coalberg for an indefinite period, subject to the owner's disposal and thereby the coal becomes inter-mingled with the general mass of property having a situs within the State, and subject to the State's dominion and liable to taxation as such; and the stored coal retains that character and status until it is again shipped in interstate commerce."

The Appellants have assigned as errors that the ordinance of the Township of Saddle River is repugnant to the commerce clause, deprives them of property without due process, and denies them the equal protection of the laws.

1

The decision of the New Jersey Court of Errors and Appeals is not reviewable on this appeal because the validity of a treaty or statute of the United States is not drawn in question nor is the validity of a statute of any state drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. The authority of the Township of Saddle River under the laws of New Jersey to adopt the ordinance in question was settled by the decision of the New Jersey Court of Errors and Appeals and is not open to attack here. *Fischer* v. *St. Louis*, 194 U. S. 361; *Schefé* v. *St. Louis*, 194, U. S. 373.

2

Any Federal question that may exist in the present case has ben so explicitly foreclosed by prior decisions as to afford no basis for an appeal. The present case is identical with *Susquehanna Coal Co.* v. *S. Amboy*, 228 U. S. 665, 35 S. Ct. 712, 57 L. Ed. 1015; *Federal Compress & W. Co.* v.

McLean, 291 U. S. 17, 54 S. Ct. 267, 78 L. Ed. 622; *General Oil Co.* v. *Crain*, 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754; *W. W. Cargil Co.* v. *Minnesota*, 180 U. S. 452, 21 S. Ct. 423, 45 L. Ed. 619.

3

This Court will not review the findings of fact by the New Jersey Court of Errors and Appeals that the business of appellants, required to be licensed by the ordinance in question in this case, was not engaged in Interstate Commerce. The record shows ample evidence to support the findings and that is as far as this Court will enter upon a consideration of the question, *Great Northern R. Co.* v. *Donaldson*, 246 U. S. 121, 38 S. Ct. 230, 62 L. Ed. 616.

4

The New Jersey Court of Errors and Appeals held that "the regulation of foreign and interstate commerce is a subject within the exclusive jurisdiction of the Congress" but that the ordinance in the present case applied only to intrastate commerce. This Court will accept the view of the New Jersey Court of Errors and Appeals as to the scope and operation of the ordinance so that no Federal question arising under the commerce clause of the Constitution is here for determination. *Erie R. R. Co.* v. *Purdy*, 185 U. S. 148, 22 S. Ct. 605, 46 L. Ed. 847.

5

There is no support in the record that the Appellants were deprived in any respect of due process of law or the equal protection of the laws. A reasonable tax was imposed on the Appellants applicable to all in the same general

classification. *MacKay Tel. & Cable Co.* v. *City of Little Rock*, 250 U. S. 94, 39 S. Ct. 428, 63 L. Ed. 863.

For the above stated reasons the motion to affirm is justified, if not the motion to dismiss.

Respectfully submitted,

HARRY LANE,
Counsel for Appellees.

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MOTION TO DISMISS APPEAL OR AFFIRM DECISION OF STATE COURT

The Appellees, William Scheele, Recorder of the Township of Saddle River, and the Township of Saddle River, a municipal corporation of the State of New Jersey, move to dismiss the appeal herein on the ground that the case presents no substantial Federal question and a further move,

if the motion to dismiss is not granted, that this Court affirm the decision of the New Jersey Court of Errors and Appeals on the grounds that the questions on which the decision of this cause depends are so unsubstantial as to leave no further argument, all as appears in the Statement Opposing Jurisdiction of this Court filed herewith.

HARRY LANE,
Counsel for Appellees.

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